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14  
15 **UNITED STATES DISTRICT COURT**  
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
17 **WESTERN DIVISION**

18 OSCAR TUBIO,

19 Plaintiff,

20 v.

21 ADIDAS AMERICA, INC., AN  
22 OREGON CORPORATION; ADIDAS  
23 AG, A GERMAN STOCK  
24 CORPORATION; AND DOES 1  
25 THROUGH 500, INCLUSIVE,

26 Defendants.

Case No. 2:22-cv-06424-GW (PVCx)  
Judge: *Hon. George Wu*

**DEFENDANT ADIDAS AMERICA,  
INC.'S ANSWER TO COMPLAINT**

Date: January 11, 2023  
Judge: Hon. George Wu  
Complaint Filed: September 8, 2022  
Trial Date: November 7, 2023

**ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENT**

Defendant adidas America, Inc. (“Defendant” or “adidas America”) by and through its undersigned counsel, responds to the Complaint filed by Plaintiff Oscar Tubio (“Plaintiff”). Defendant responds to the paragraphs of the Complaint in numbered paragraphs that correspond to the numbering system adopted in Plaintiff’s Complaint. Defendant denies each allegation in the Complaint unless expressly admitted.

**ANSWER TO PARAGRAPHS TITLED**  
**“JURISDICTION AND VENUE”**

1. adidas America admits that the Complaint purports to assert causes of action under the Copyright Act of 1976, Title 17 U.S.C., § 101 et seq., but denies that these causes of action have any merit.

2. adidas America admits this Court has federal question jurisdiction under U.S.C. § 1331 and 1338 (a) and (b).

3. adidas America admits that venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a). adidas America denies the remaining allegations contained in Paragraph 3 of the Complaint.

**ANSWER TO PARAGRAPHS TITLED “PARTIES”**

4. adidas America is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in this paragraph and, on that basis, denies the allegations contained in Paragraph 4 of the Complaint.

5. adidas America admits that it is an Oregon Corporation with its principal place of business located at 5055 Greeley Ave., Portland, Oregon 97217, and is doing business in the state of California. adidas America denies the remaining allegations contained in Paragraph 5 of the Complaint.

6. adidas America admits that named defendant adidas AG is a German stock corporation with its principal place of business located at Adi-Dassler-Strasse

1 1, 91074 Herzogenaurach, Germany. adidas America denies that adidas AG is a  
2 proper party to this action.

3 7. adidas America is without sufficient knowledge or information to form  
4 a belief as to the truth of the allegations contained in this paragraph and, on that  
5 basis, denies the allegations contained in Paragraph 7 of the Complaint.

6 8. adidas America denies the allegations of Paragraph 8 of the Complaint.

7 **ANSWER TO PARAGRAPHS TITLED “FACTUAL BACKGROUND”**

8 9. adidas America is without sufficient knowledge or information to form  
9 a belief as to the truth of the allegations contained in this paragraph and, on that  
10 basis, denies the allegations contained in Paragraph 9 of the Complaint.

11 10. adidas America admits that Boca Juniors is a soccer team in Argentina.  
12 adidas America is without sufficient knowledge or information to form a belief as to  
13 the truth of the remaining allegations contained in this paragraph and, on that basis,  
14 denies the remaining allegations contained in Paragraph 10 of the Complaint.

15 11. adidas America is without sufficient knowledge or information to form  
16 a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint  
17 and, on that basis, denies the allegations contained in this paragraph.

18 **ANSWER TO PARAGRAPHS TITLED “CLAIMS RELATED TO**  
19 **BOCA STARS”**

20 12. adidas America denies the allegations in the first sentence of Paragraph  
21 12 of the Complaint to the extent it alleges that the artwork at issue in this action is  
22 “original.” adidas America denies the allegations in the second sentence of  
23 Paragraph 12 of the Complaint to the extent it alleges that the artwork at issue in this  
24 action is “owned exclusively” by Plaintiff. adidas America denies the allegations in  
25 the final sentence of Paragraph 12 of the Complaint to the extent it alleges that the  
26 artwork at issue in this action is the subject of any valid copyright. adidas America is  
27 without sufficient knowledge or information to form a belief as to the truth of the  
28

1 remaining allegations contained in Paragraph 12 of the Complaint and, on that basis,  
2 denies the remaining allegations contained in this paragraph.

3 13. adidas America admits that Exhibit C purports to be an Argentina  
4 copyright registration certificate which document speaks for itself, but is without  
5 sufficient knowledge or information to form a belief as to the truth of the remaining  
6 allegations in Paragraph 13 of the Complaint and, on that basis, denies the remaining  
7 allegations contained in this paragraph.

8 **ANSWER TO PARAGRAPHS TITLED “DEFENDANTS’ COPYRIGHT**  
9 **INFRINGEMENT”**

10 14. adidas America admits that Diego Maradona passed away on November  
11 25, 2020 and that such event made headlines. adidas America admits that it has sold  
12 licensed jerseys depicting the Boca Juniors jersey. adidas America denies that it  
13 “produced and sold” replica jerseys “in order to capitalize” on the death of Diego  
14 Maradona. adidas America is without sufficient knowledge or information to form a  
15 belief as to the truth of the remaining allegations in Paragraph 14 of the Complaint  
16 and, on that basis, denies the remaining allegations contained in this paragraph.

17 15. adidas America lacks knowledge or information sufficient to form a  
18 belief about the truth of the allegations contained in Paragraph 15 of the Complaint  
19 and, on that basis, denies the allegations contained in this paragraph.

20 16. adidas America admits that on or about December 19, 2021, a Christian  
21 Barra contacted Roland Auschel, a board member of adidas AG, purporting to  
22 represent Plaintiff. adidas America admits that there were subsequent  
23 communications between adidas Argentina representatives in Argentina and  
24 Plaintiff’s representatives, culminating in a mediation. adidas America admits that  
25 Plaintiff has initiated legal proceedings in Argentina against adidas Argentina. adidas  
26 America lacks knowledge or information sufficient to form a belief about the truth of  
27 the remaining allegations contained in Paragraph 16 of the Complaint and, on that  
28 basis, denies the remaining allegations contained in this paragraph.

1           17.     adidas America admits that it has sold licensed jerseys depicting the  
2 Boca Juniors 1981 jersey style. adidas America denies the remaining allegations of  
3 Paragraph 17 of the Complaint.

4           18.     adidas America denies the allegations contained in Paragraph 18 of the  
5 Complaint.

6           19.     adidas America denies the allegations contained in Paragraph 19 of the  
7 Complaint.

8           20.     adidas America denies the allegations contained in Paragraph 20 of the  
9 Complaint.

10                   **ANSWER TO THE FIRST CLAIM FOR RELIEF**

11           21.     adidas America repeats and incorporates by reference its responses to  
12 Paragraphs 1 through 20 above.

13           22.     adidas America admits that it had access to the 1981 iteration of the  
14 Boca Juniors jersey and the stars design that it contained. To the extent there are any  
15 remaining allegations contained in Paragraph 22 of the Complaint, adidas America  
16 denies such allegations.

17           23.     adidas America admits that it sells garments. adidas America denies that  
18 any garments at issue in this case are “illegal derivations” of Plaintiff’s purported  
19 artwork. Adidas America lacks knowledge or information sufficient to form a belief  
20 about the truth of the remaining allegations contained in Paragraph 23 of the  
21 Complaint and, on that basis, denies such allegations.

22           24.     adidas America denies the allegations contained in Paragraph 24 of the  
23 Complaint.

24           25.     adidas America denies the allegations contained in Paragraph 25 of the  
25 Complaint.

26           26.     adidas America denies the allegations contained in Paragraph 26 of the  
27 Complaint.  
28

1           27.    adidas America denies the allegations contained in Paragraph 27 of the  
2 Complaint.

3           28.    adidas America denies the allegations contained in Paragraph 28 of the  
4 Complaint.

5           29.    adidas America denies the allegations contained in Paragraph 29 of the  
6 Complaint.

7                           **ANSWER TO THE SECOND CLAIM FOR RELIEF**

8           30.    adidas America repeats and incorporates by reference its responses to  
9 Paragraphs 1 through 29 above.

10          31.    adidas America denies the allegations contained in Paragraph 31 of the  
11 Complaint.

12          32.    adidas America denies the allegations contained in Paragraph 32 of the  
13 Complaint.

14          33.    adidas America denies the allegations contained in Paragraph 33 of the  
15 Complaint.

16          34.    adidas America denies the allegations contained in Paragraph 34 of the  
17 Complaint.

18          35.    adidas America denies the allegations contained in Paragraph 35 of the  
19 Complaint.

20          36.    adidas America denies the allegations contained in Paragraph 36 of the  
21 Complaint.

22                           **ANSWER TO PRAYER FOR RELIEF**

23           No response is required with regard to Plaintiff's prayer for relief. To the  
24 extent any such response may be required, adidas America repeats and incorporates  
25 by reference its responses to Paragraphs 1-36 above and states that Plaintiff is not  
26 entitled to any of the relief sought in the Complaint for each of the reasons set forth  
27 in this Answer and Affirmative Defenses to Plaintiff's Complaint and for additional  
28 reasons that will be established during the course of this proceeding

1 **AFFIRMATIVE DEFENSES**

2 In further answer to the Complaint, adidas America asserts the following  
3 affirmative defenses:

4 **First Affirmative Defense – Lack of Originality**

5 Plaintiff's alleged copyrighted work lacks the originality sufficient to merit  
6 copyright protection under United States law.

7 **Second Affirmative Defense – Lack of Timely Registration**

8 Plaintiff is not entitled to statutory damages or attorneys' fees because it lacks  
9 a timely United States registration for his alleged copyrighted work.

10 **Third Affirmative Defense - License**

11 Plaintiff's claims are barred in whole or in part because adidas America had a  
12 license to use the alleged copyrighted work.

13 **Fourth Affirmative Defense - Acquiescence**

14 Plaintiff's claims are barred in whole or in part because Plaintiff acquiesced to  
15 Boca Juniors' use and licensing of the alleged copyrighted work.

16 **Fifth Affirmative Defense – Estoppel**

17 Plaintiff's claims are barred in whole or in part because Plaintiff was aware of  
18 Boca Juniors' use and licensing of the alleged copyrighted work and allowed that use  
19 to continue without objection. adidas America relied on Plaintiff's allowance of this  
20 use to its detriment, as Plaintiff is now objecting to conduct to which it previously  
21 assented.

22 **Sixth Affirmative Defense - Waiver**

23 Plaintiff's claims are barred in whole or in part because Plaintiff was aware of  
24 Boca Junior' use of the alleged copyrighted work and allowed that use to continue  
25 without objection. Plaintiff thus waived any alleged copyright infringement claim.

26 **Reservation of Rights**

27 adidas America has not completed its investigation and discovery regarding the  
28 facts and claims asserted by Plaintiff. Accordingly, without admitting any obligation

1 to do so, adidas America reserves the right to assert such additional affirmative  
2 defenses as necessary based on such ongoing investigation and discovery.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Defendant adidas America prays as follows:

- 5 1. That Plaintiff take nothing by reason of his Complaint, and that  
6 judgment be rendered in favor of adidas America on the Complaint;  
7 2. That adidas America be awarded its cost of suit incurred in the defense  
8 of this action;  
9 3. That adidas America be awarded attorneys' fees with respect to the  
10 defense of this action, as permitted by law; and  
11 4. For such other and further relief as may be just and equitable.

12  
13 DATED: January 11, 2023

Respectfully submitted,

14 KILPATRICK TOWNSEND & STOCKTON LLP

15  
16 By: /s/James A. Trigg

KOLLIN J. ZIMMERMANN

17 R. CHARLES HENN, JR. (*pro hac vice Granted*)

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